



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0179

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 2 | 8.200 - Using Force (1) Use of Force: When Authorized | Not Sustained - Lawful and Proper |
| # 3 | 6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest | Not Sustained - Lawful and Proper |
| # 4 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Sustained |

Imposed Discipline

Written Reprimand

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 2 | 8.200 - Using Force (1) Use of Force: When Authorized | Not Sustained - Lawful and Proper |
| # 3 | 6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest | Not Sustained - Lawful and Proper |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

An SPD supervisor sent an OPA complaint alleging that Named Employee #1 (NE#1) directed profanity at an arrestee (the Subject). OPA reviewed the incident. During the incident, the Subject alleged that NE#1 and Named Employee #2 (NE#2) arrested him without probable cause because the Subject was Black. The Subject also alleged that the named employees used unauthorized force by TASING, fighting, and restraining him until he could not breathe.

ADMINISTRATIVE NOTE:

On August 23, 2023, the Office of Inspector General (OIG) certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA opened an investigation, including reviewing the OPA complaint, computer-aided dispatch (CAD) call report, the incident report and supplements, use of force documents, bias review documents, and body-worn videos (BWV). OPA



also interviewed NE#1 and NE#2. The Subject was incarcerated during OPA's investigation. OPA requested an interview through the Subject's attorney but did not receive a response.

SPD officers, including the named employees, responded to an assault call. CAD call report remarks noted a male voice screaming, "Please stop! No. No. No. Don't! Get off me!"

Witness Officer #1 (WO#1) arrived at the incident location and met the 9-1-1 caller (Victim #1) at the apartment building's entrance. Victim #1 indicated that the assault was ongoing on the fifth floor. WO#1 went to the fifth floor. The named employees also arrived and proceeded to the fifth floor.

WO#1 and the named employees spoke with Victim #2 inside the apartment. Victim #2 said the suspect left. Victim #2 was visibly injured, including blood on his face. Victim #2 identified the Subject by name as the offender. Victim #2 described the Subject as an African American male, approximately five feet ten inches tall, with a triangle tattoo over his left eye. Victim #2 said the Subject punched his face multiple times, causing injury and unconsciousness, took Victim #1's cell phone, and forcefully digitally penetrated his anus. Victim #1 also reported being punched in the face by the Subject. Officers conducted an area but were unable to locate the Subject. Officers found several bags of clothing and a cell phone. Victim #2 said the cell phone was his and the clothes were the Subject's.

A short time later, NE#1 and NE#2 sat in full uniform in a marked SPD vehicle near the incident location. NE#2 ran the Subject's name, learning he had active felony warrants.

The named employees did not activate their BWV while sitting in their SPD vehicle. Still, they documented that the Subject approached their vehicle, knocked, and said his cell phone was inside the victims' apartment building. The named employees noted a triangle tattoo above the Subject's left eye. The Named Employees exited their vehicle and approached the Subject.

BWV recorded the named employees approaching the Subject. The Subject backed away, held his hands in front of his body, and pulled his pants up (which NE#1 interpreted as intent to fight or flee). As the Subject attempted to walk away, NE#1 and NE#2 grabbed him. The Subject pulled away. The named employees told the Subject he was not free to leave. The Subject broke free and punched NE#1's right ear.¹ NE#1 then struggled with the Subject, injuring NE#1's shoulder.²

NE#2 deployed his TASER twice. NE#2 documented that the first deployment was ineffective but wrote that the second deployment caused neuromuscular incapacitation (NMI). BWV showed the Subject's legs lock up, causing him to fall.

With the Subject on the ground, the named employees struggled to control the Subject's arms. The named employees gave the Subject multiple commands to give them his arms. The Subject did not comply, burying his right arm under his body. NE#2 put his TASER in "drive stun" mode against the Subject's left posterior abdomen. NE#1 then controlled the Subject's right arm. NE#2 grabbed the Subject's left arm and brought it behind the Subject, where NE#1 applied handcuffs.

¹ BWV showed the Subject resisting the named employees, but the angle did not clearly capture the punch. However, the named employees documented the punch, corroborated by a photograph of NE#1's red and swollen ear.

² The named employees documented hearing NE#1's shoulder pop.



The Subject said he could not breathe. The named employees placed the Subject in recovery and later allowed him to sit up. The Seattle Fire Department was also called to medically screen the Subject.

Victim #2 positively identified the Subject as the offender. The Subject was arrested.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Subject alleged that NE#1 and NE#2 arrested him without probable cause because he was Black.

SPD policy prohibits biased policing, defined as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

OPA found no evidence to support this allegation. The victims identified the Subject by name and provided a detailed description, including the triangle tattoo above his left eye. The victims’ account also suggested that the Subject committed multiple felonies (including rape and robbery). NE#2 ran the Subject’s name and learned he had multiple felony warrants. Shortly thereafter, NE#1 and NE#2 contacted the Subject, who volunteered that he was recently inside the building where the alleged crimes occurred. When the named employees attempted to detain the Subject lawfully, the Subject violently resisted and punched NE#1. The Subject was arrested because NE#1 and NE#2 had probable cause to believe he recently committed multiple crimes rather than his race.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

8.200 - Using Force (1) Use of Force: When Authorized

The Subject alleged that NE#1 used excessive force while arresting him.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” during tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

NE#1 had probable cause to arrest the Subject. When NE#1 tried grabbing the Subject, the Subject punched NE#1’s head and resisted with force sufficient to “pop” or dislocate NE#1’s shoulder. Nevertheless, at that time, NE#1 used



no more than Type I force by grabbing, holding, and swinging the Subject and pushing the Subject against a wall. Under the totality of the circumstances, NE#1's force was objectively reasonable, necessary, and proportional to overcome the Subject's resistance and prevent his flight. Finally, although the Subject repeatedly alleged he could not breathe, OPA did not observe NE#1 taking any action to restrict the Subject's airflow. Moreover, after stating he could not breathe, the Subject was placed in the recovery position, allowed to sit up, and SFD was summoned.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #3

6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest

The Subject alleged that NE#1 and NE#2 lacked probable for his arrest.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

For the reasons at Named Employee #1 - Allegation #1, the named employees had probable cause to arrest the Subject for multiple crimes.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

It was alleged that NE#1 was unprofessional with the Subject.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward any person." *Id.*

NE#1 made several unprofessional statements.

- NE#1 told the Subject, "You want to fucking try again? You want to do it again? You want another ride?" after the Subject was TASED and on the ground, but before NE#2 deployed his TASER in drive stun.
- After NE#2 deployed his TASER in drive stun, NE#1 asked, "You want to keep going? You want some more?"



- NE#1 told the Subject, “Okay. If I stand you up and you buck up on me, I am going to dump you again.” The Subject responded, “I wasn’t bucking.” NE#1 replied, “Fool! You swung on me. You’re getting a charge for that.”
- After the Subject was handcuffed, he again attempted to flee. NE#1 asked, “Are you really that stupid, man?”
- After the Subject was in the back of an SPD vehicle, BWV recorded NE#1 stating, “Stupid motherfucker, man.” It did not appear that the Subject could hear that statement.
- After SFD arrived, NE#1 observed that the Subject slipped his handcuffs to the front of his body. The following exchange followed:
 - **NE#1:** You realize what’s gonna happen if you keep putting your hands in the front?
 - **Subject:** Yes, sir. Oh, in front?
 - **NE#1:** Yeah. You’re not allowed to put them in the front.
 - **Subject:** They were hurting my back.
 - **NE#1:** Well, they belong in your back. We’re going to take you out. We’re going to put your hands behind your back and cuff you again. If you slip them in the front, we’re going to handcuff your feet to your hands. You understand?
 - **Subject:** Yeah, I understand. But I hope y’all understand what y’all do.
 - **NE#1:** I’m gonna let you out of this car and I’m gonna put you back in cuffs. If you tried to buck up for the third time on me? It’s gonna end badly. Do you understand?
- A short time later, NE#1 told the Subject, “If you move your handcuffs to the front again, you’re going to get hogtied. . . ‘hogtied’ is when you handcuff your feet to your legs, I mean your hands to your feet. That’s really uncomfortable, okay. Don’t do that.”
- BWV recorded NE#1, saying, “This mother fucker does not learn.” It did not appear the Subject heard it.

OPA recognizes that NE#1’s statements occurred after the Subject punched him and caused NE#1’s shoulder to either “pop” or dislocate. However, NE#1 made most of the statements well after the heat of the moment. Moreover, the number of unprofessional statements NE#1 made to or about the Subject and NE#1’s continued engagement with the Subject distinguish NE#1’s statements from spontaneous uses of profanity during a physical struggle.

Separately, NE#1 made several statements that were taunting and escalatory (“You want to fucking try again? You want to do it again? You want another ride?” and “You want to keep going? You want some more?”).

Finally, NE#1’s threat to “hog-tie” the Subject was unprofessional, escalatory, and—if carried out as NE#1 threatened—in violation of SPD policy. *See* SPD 8.300-POL-7(2) (“The Hobble Restraint may not be connected to handcuffs or other restraints (i.e., ‘hog tie’).” To the extent NE#2 or the SPOG representative in NE#2’s interview suggested that there was confusion about “hog-tie” versus “hobble restraints,” OPA disagrees and finds the prohibition on connecting a detainee’s feet to their hands with a hobble restraint to be explicitly prohibited.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #2 - Allegation #1

5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

8.200 - Using Force (1) Use of Force: When Authorized

The Subject alleged NE#2 used excessive force by deploying his TASER.

NE#2 deployed his TASER three times. The first two deployments—the first of which was ineffective—occurred while the Subject was standing and forcefully resisting the named employees’ lawful efforts to detain him. The third deployment, NE#2 used his TASER in “drive stun” mode while the Subject was on the ground. The first two TASER deployments were lawful and proper. The Named Employees had probable cause to believe the Subject had recently committed multiple violent felonies. The Subject was also forcefully resisting. NE#2 witnessed the Subject pulling away from himself and NE#1. Even after struggling with the Subject for several seconds, NE#1 and NE#2, working together, could not bring the Subject to the ground. Moreover, NE#2 witnessed the Subject punch NE#1 in the head and documented hearing NE#1’s shoulder “pop.” The situation, as perceived by NE#2, was rapidly evolving. Using the TASER to achieve NMI and bring the Subject to the ground was objectively reasonable to effect the lawful purpose of bringing the Subject to the ground and was proportional to the resistance the Subject was offering.

The third TASER deployment was also lawful and proper. After the Named Employees brought the Subject to the ground, the Subject resisted by pulling his right arm away from NE#1, putting his right arm underneath his body, and refusing to bring his right arm to his back to be handcuffed. Considering the factors above, together with the Subject’s continued resistance and the potential that the Subject could be reaching for a weapon underneath his body, it was objectively reasonable for NE#2 to use his TASER in drive stun to effect his lawful purpose of gaining control of the Subject’s right arm. This use of force was proportional to the resistance the Subject was offering, and other efforts—such as *de minimis* force to pull the Subject’s arm—were ineffective.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #3

6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest

For the reasons at Named Employee #1 - Allegation #3, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**